IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 3799 of 2001
Date of Decision: 15.11.2006

Vas Dev Aggarwal ...Petitioner

Versus

Kishan Dass ....Respondent

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA.

Present: Shri Puneet Jindal, Advocate, for the petitioner.

Shri Sumeet Mahajan, Advocate, and
Shri P.K. Longia, Advocate, for the respondent.

JUDGMENT

The landlord is in revision petition aggrieved against the order passed by the authorities below, whereby the ejectment of the tenant sought on the ground of non-payment of arrears of rent, was dismissed.

The petitioner sought ejectment of the respondent on the ground that the tenant has not paid the arrears of rent @ Rs.1000/- per month with effect from 1.5.1992 and therefore, the respondent is liable to be evicted. In reply to the said petition, it was the stand of the respondent that in fact, Nirmala Devi wife of the petitioner has inducted the respondent as a tenant in the year 1976. The rent has been increased from time to time and at present the rent is Rs.200/- per month. It was alleged that there does not exist any relationship of landlord and tenant between the parties. The respondent denied any writing undertaking to pay rent @ Rs.1000/- per month on 20.10.1991 and in fact, asserted that Nirmala Devi received rent upto 15.5.1992 at Jalandhar vide receipt dated 7.2.1992 signed by her in her own hand when she came to Jalandhar on the marriage of the daughter of Shri Krishan Goel. The petitioner in the replication, did not deny the

execution of the receipt by Nirmala Devi on 7.2.1993 in respect of rent paid upto 15.5.1992.

The learned Rent Controller dismissed the ejectment petition holding that there does not exist any relationship of landlord and tenant between the parties and that the rate of rent is Rs.200/- per month. Thus, it was found that the tender made by the tenant @ Rs.200/- per month from 1.5.1992 to 30.11.1993 along with interest and costs, cannot be said to be invalid. The learned Appellate Authority reversed the finding in respect of relationship of landlord and tenant between the parties as it was held that since Nirmala Devi has no title over the suit property, therefore, there exists relationship of landlord and tenant between the parties. Therefore, after reversing the finding regarding relationship of landlord and tenant between the parties, the learned Appellate Authority found that the agreed rate of rent is Rs.200/- per month only. It was found that the rent note dated 20.10.1991 Exhibit A.3 is a void transaction as there is no evidence that respondent ever paid Rs.1000/- per month as rent. Still further, it was found that after the rent note was executed, Nirmala Devi has received rent vide receive Exhibit RW5/6 dated 7.2.1993 upto 15.5.1992 @ Rs.200/- per month and thus, a finding was returned that the rate of rent is Rs.200/- per month and that the petitioner is not entitled to seek ejectment of the tenant herein.

Learned counsel for the petitioner has vehemently argued that once the document Exhibit A.3 is proved to be executed by the tenant, the rent mentioned therein was an agreed rate of rent and, therefore, non-payment of such rent entails the ejectment of the respondent. In respect of receipt dated 7.2.1993 Exhibit RW5/6, it was argued that since Nirmala

Devi has not been examined by the respondent as a witness, the said receipt cannot be taken into consideration as such receipt is not proved to be executed by Nirmala Devi. It is further argued that the receipt Exhibit RW5/6 is unnatural as the receipt is purported to be executed on 7.2.1993 in respect of the rent upto 15.5.1992 and the amount paid is Rs.270/-. The rent is purported to be paid in respect earlier period of tenancy and that too for a period, which is almost 10 months earlier.

After hearing learned counsel for the parties at some length, I do not find any merit in the present revision petition. The petitioner has asserted tenancy vide document dated 20.10.1991, which has been produced as Exhibit A.3 and it was asserted that the respondent has not vacated the premises even after the expiry of 11 months fixed as a period of tenancy under the aforesaid document. It may be noticed that in the petition, there is no averment that the rent @ Rs.1000/- was ever paid by the respondent to the petitioner. It was only asserted that the respondent in spite of repeated requests did not make payment of rent upto 1.5.1992. Though reference was made in the petition in respect of rent paid upto April, 1992 on 13.5.1992, through a receipt, which is alleged to be in possession of the respondent and executed by the petitioner in favour of the respondent, but no attempt has been made to prove such payment of rent. The petitioner has not produced any income tax record to prove that the landlord has received rent at the said rate after the alleged memo of tenancy was recorded on 20.10.1991.

It was also asserted that Nirmala Devi is the landlady as the premises were taken from her on 5.4.1996 at the monthly rent of Rs.200/- per month and subsequently, the rent was increased. It was also alleged that the rate of rent in the locality and near vicinity is not more than Rs.300/-. In

para No. 3(a) of the written statement, after denying the execution of the instrument of memo of tenancy, the respondent alleged that the landlady has already received rent on 7.2.1993 upto 15.5.1992 vide a receipt written by her in her own hand when she visited Jalandhar Cantt. In replication, it was asserted that Nirmala Devi is the wife of the petitioner, who has executed a General Power of Attorney in favour of R.K. Singhal. In another para, it was asserted that the property has fallen to the share of Shri Vas Dev Aggarwal and that Smt. Nirmala Devi has no authority to let the property to the respondent. The averments regarding receipt having been executed by Nirmala Devi on 7.2.1993 on her visit to Jalandhar Cantt. were not denied in the replication. In fact, the respondent has produced marriage card Exhibit R.1 in respect of marriage of Shri Krishan Goel's daughter, as alleged in the written statement that on the said date Smt. Nirmala Devi has executed a receipt in respect of payment of rent. Apart from the marriage card, the respondent has also produced receipt Exhibit RW5/1 in respect of payment of rent of Rs.240/- for the months of April and May, 1976, receipt Exhibits RW5/2 dated 1.4.1982, RW5/3 receipt dated 1.6.1985 receiving Rs.175/- as rent upto June 1985; RW5/4 dated 1.2.1986 receiving rent of Rs.400/- for the months of December, 1985 and January, 1986; RW5/5 dated 17.11.1990 receiving Rs.200/- as rent for the month of November, 1990 and Exhibit RW5/6 acknowledging receipt of Rs.270/- as rent upto 15.5.1992 dated 7.2.1993. Apart from the said documents, the tenant has also produced Bank statement of account of Nirmala Devi Exhibit RW6/1, in respect of payment of rent from time to time for the period April, 1968 till April, 1991, wherein a sum of Rs.200/- is deposited every month.

Learned counsel for the petitioner has vehemently argued that

the rent receipts Exhibits RW5/1 to RW5/6 are not duly proved as Nirmala Devi was never examined as a witness. Apart from the fact, the execution of the writing dated 7.2.1993 was not denied by the landlord in the replication though it was specifically pleaded by the tenant in the written statement. It was for the petitioner to produce the best evidence and to examine Nirmala Devi as a witness so as to rebut the evidence led by the respondent-tenant. The burden to prove rate of rent was on the petitioner. The petitioner has not produced any receipt in respect of payment of rent @ Rs.1000/- per month from the date of the execution of the memorandum of tenancy on 20.10.1991. But, on the other hand, the tenant has produced the Bank statement Exhibit RW6/1 and various rent receipts executed by Nirmala Devi. In view of the evidence on record, the finding that the rate of rent is Rs.200/- per month cannot be said to be suffering from any patent illegality or irregularity, which may warrant interference by this Court, in exercise of its revisional jurisdiction.

Hence, the present revision petition is dismissed.

15.11.2006 (HEMANT GUPTA)
ds JUDGE